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NO. _____

SUPREME COURT OF THE UNITED STATES
Winter Term - 1982

FRANKLIN COUNTY SHERIFF'S OFFICE
Petitioner,

-vs-

BETTY SELLERS
Complainant/Respondent

and

WASHINGTON STATE HUMAN RIGHTS COMMISSION
Respondent.

On Appeal from the Supreme Court
of Washington

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT OF THE UNITED STATES

FRANKLIN COUNTY SHERIFF'S OFFICE, Petitioner, vs- BETTY SELLERS, Complainant/Respondent, and- WASHINGTON STATE HUMAN RIGHTS COMMISSION, Respondent.	NO._____ PETITION FOR WRIT OF CERTIORARI

Application is made by the Franklin County Sheriff's Office in the State of Washington for a Writ of Certiorari.

Rule 21.1.(a) Questions Presented for Review.

.(i). Was the Tribunal of Judges before which the Franklin County Sheriff's Office was tried in suit brought by the Washington State Human Rights Commission properly constituted under the Fourteenth Amendment due process clause of the

United States Constitution when said Tribunal was appointed and operated by the Washington State Human Rights Commission itself?

.(ii). Under the special facts of this case was the Tribunal of Judges properly constituted, qualified and operated under the due process clause of the Fourteenth Amendment of the Constitution of the United States?

.(iii). Is a Tribunal of the Washington State Human Rights Commission providing Fourteenth Amendment due process when deciding by judges:

.a. Who give a special limiting oath;

.b. Who are appointed by the Human Rights Commission case by case without tenure, and without legislatively established standards of appointment as a lay peoples' court but who may have private knowledge of facts.

.c. Who can be dismissed by the

Human Rights Commission with the only penalty being non-reappointment to a subsequent case;

.d. Who are so specially interested, not disinterested, they serve free;

.e. Who then have their compensation substantially increased during the pendency of this particular case;

.f. Who decided issues between two persons when their appointing Human Rights Commission is the advocate for one before these very judges;

.g. Who make Findings of Fact with non-reviewable finality;

.h. Whose findings cannot be supplemented by additional evidence at the Superior Court level?

Rule 21.1.(b) Parties.

.(i). Franklin County Sheriff's Office, Petitioner;

.(ii). Betty Sellers, Complainant/Respon-

dent;

.(iii). Washington State Human Rights Commission, Respondent.

Rule 21.1.(c) Table of Contents and Table of Authorities.

Note: RCW means Revised Code of Washington. WAC means Washington Administrative Code.

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Rule 21.1.(d)

.(i). The Opinion of the Tribunal in this case is in case number P-41-74 of the Washington State Human Rights Commission. Washington State Human Rights Reporter, WD-260, December, 1977, Donworth, Taylor and Co.; Book Publishing Company. (appears as Appendix No. 1 .)

.(ii). The Opinion of the Superior Court of Franklin County, Washington is case number 23165 and is not known to be published. (appears as Appendix No. 2 .)

.(iii). The Opinion of the Court of Appeals is published as 27 Wn.App. 797, 621 P.2d 751. (appears as Appendix No. 3 .)

.(iv). The Opinion of the Supreme Court of Washington is published as 97 Wn.2d 317, 646 P.2d 113. (appears as Appendix No. 4 .)

Rule 21.1.(e) Grounds of Jurisdic-

tion.

.(i). Judgment by opinion of the Washington State Supreme Court was confirmed May 13, 1982. (see Appendix No. 4.)

.(ii). Reconsideration was denied June 29, 1982. (appears as Appendix No. 10.) The order of the United States Supreme Court dated September 21, 1982, Extending Time to File Petition for Writ of Certiorari extended time to file to and including November 1, 1982. No. A-286. (appears as Appendix No. 6.)

.(iii). Not applicable.

.(iv). 28 USCS, sec. 1257. State courts; appeal; certiorari.

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
> (1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.
> (2) By appeal, where is drawn in question the validity of a statute

of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.
(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

"For the purposes of this section, the term 'highest court of a State' includes the District of Columbia Court of Appeals.
(June 25, 1948, c. 646, sec. 1, 62 Stat. 929; July 29, 1970, P.L. 91-358, Title I, Part D, Subpart 2, Sec. 172(a)(1), 84 Stat. 590.)"

Petitioner relies on subsection (3) above, and if necessary for review this application should be alternately construed as an appeal. Then subsection (2) above applies.

Rule 21.1.(f)

The Constitutional provisions,

No. 14.)

R.C.W. 49.60.180(1) (appears as Appendix No. 14.)

R.C.W. 49.60.250 (appears as Appendix No. 15.)

R.C.W. 49.60.250, as amended (appears as Appendix No. 16.)

.(iii). Regulations - Washington Administrative Code

WAC 162-08-061 (appears as Appendix No. 17.) Reserved

WAC 162-08-072 (appears as Appendix No. 18.)

WAC 162-08-201 (appears as Appendix No. 19.)

WAC 162-08-211 (appears as Appendix No. 20.)

WAC 162-08-211(6) (appears as Appendix No. 20.)

WAC 162-08-212 (appears as Appendix No.

21.)

WAC 162-08-215 (appears as Appendix No. 22.)

Note: Copies of Statutes and Regulations are set forth in the Appendix.

Rule 21.1.(g) Statement of Material Facts.

The Washington State Human Rights Commission commenced action before itself the Washington State Human Rights Commission. A Tribunal of three was appointed by the Commission's Chairman in accordance with statutes of the State of Washington and Rules established by said Commission. Objection was made that the Tribunal was not constitutionally constituted, qualified or operated. The Tribunal decided in Findings of Fact and Conclusions of Law in favor of the Commission (Appendix No. 7) which appointed them and in favor of Betty Sellers nomi-

nal party complainant, and then ordered $7,200 damages together with issuing certain other orders to the County. (Appendix No. 5.)

On appeal to the Superior Court of the State of Washington this judgment-decree was affirmed. Constitutionality was upheld in Findings of Fact and Conclusions of Law. (Appendix No. 8.) On appeal to the Court of Appeals this judgment-decree was reversed but on the Commission's appeal to the Washington State Supreme Court, the judgment-decree of the Tribunal and the Superior Court were reinstated. In the Tribunal and all courts, objection was made that the Tribunal was not properly constituted or operated under the due process clause of the Fourteenth Amendment to the United States Constitution. See the next subsection confirming the basis of juris-

diction under the Constitution and laws of the United States.

The judgment-decree will stand if the Tribunal was constitutionally constituted, qualified and operated. If not, then the judgment-decree will fall with the unconstitutionality of the Tribunal and its actions.

This Petition for Writ of Certiorari requests the United States Supreme Court to hold the judgment-decree at naught because the statutes and regulations under which the Tribunal in this case was appointed and operated was unconstitutional under the Fourteenth Amendment.

During the pendency of this case and not applicable to it, the Washington State Legislature has established an independent body of Administrative Judges assigned by an independent Chief Judge

to particular cases for almost all administrative hearings in the State of Washington, including those of the Washington State Human Rights Commission.[1]

(In other words, the war was won against agency appointed Judges in the legislature but the battle against such Tribunal Judges in this particular case was lost before the State Supreme Court.) We ask this Court to reverse the Washington State Supreme Court and hold this Tribunal, its appointment and function unconstitutional under the Fourteenth Amendment of the United States Constitution.

The Legislature gave no relief to protesters in pending cases.

Forty-one states like Washington in our case have agency appointed Judges

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[1] See p. 14,26 infra. R.C.W. 49.60.250 (Appendix No. 16.), effective July 1, 1982.

in administrative hearings. Eleven have independent judges.[2]

The Franklin County Sheriff's Office was tried before agency appointed Tribunal Judges:

.(i). Who gave a special pledge more limiting than that given by the President of the United States; (see Appendix No. 20.)

.(ii). Who were appointed by the Administrative body trying the respondent; (see Appendix No. 15.)

.(iii). Who were appointed by the Human Rights Commission which is a party, on a case by case basis without tenure and without legislative standards of appointment as a lay peoples' court established legislatively but who may

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[2] L. Harold Levinson, The Central Panel System; a Framework that Separates ALJs from Administrative Agencies. The Journal of American Judicature Society November 1981, Vol. 65, No. 5, p. 236, et seq.

have private knowledge of facts; (see Appendix No. 15, 20.)

.(iv). Who can be dismissed by the appointer but who can be disciplined only by no reappointment; (see Appendix No.22.)

.(v). Who are so interested, not disinterested, they volunteer and serve free; (see Appendix No. 20.)

.(vi). Who then have their compensation increased in this case very substantially during the pendency of this case befc[illegible] them; (see Appendix No. 21, effective July 25, 1977.), and

.(vii). Who do all this in disputes between two persons, while their appointor, the Washington State Human Rights Commission is serving as advocate for one. (see Appendix No. 15, 19.)

.(viii). Who make Findings of Fact with non-reviewable finality. (see Appendix No. 4.)

.(ix). Whose Findings of Fact cannot be

supplemented by additional evidence at the next court - the Superior Court level. (see Appendix No. 4, 11.)

The foregoing facts are established by the statutes and regulations under which this Petitioner was tried and decisions of the courts below. (see Appendix items as cited above and the Opinion of the Washington State Supreme Court in this case. Appendix No. 4 .)

Rule 21.1.(h) Federal Jurisdiction

This case involves the "due process" clause of the United States Constitution, Amendment 14 reading "...nor shall any state deprive any person of life, liberty or property without due process of law;". .(i). Complaint HRC No. P-41-47 was filed by the Washington State Human Rights Commission with the clerk thereof entitled: Betty P. Sellers, Complainant, v. Franklin County Sheriff's Office, Respon-

dent. It was dated January 26, 1977.

.(ii). Service was had by certified mail on Franklin County. A Tribunal to hear the case was appointed.

.(iii). Thereafter notice was given on March 30, 1977 by Franklin County by certified mail No. 028215 to said Commission stating the appointment and operation of the Tribunal was violative of Federal Constitutional due process. (see Appendix No. 23.)

.(iv). Respondent also answered in Affirmative Defense in Paragraph X of the Answer (p. 2)

> "That the tribunal is not lawfully or constitutionally constituted." (see Appendix No. 24.)

.(v). In a further responding answer, dated May 13, 1977, Respondent additionally stated in Paragraph A as follows:

> "A. That as previously stated the panel is not properly qualified since their oath and qualifications are calculated to favor the State

Board instead of administering even handed justice. A fair hearing cannot be had."

In this responding Answer previous affirmative defenses, including Paragraph X of the Answer above, were reaffirmed at page 2 . (see Appendix No. 25.)

.(vi). Trial was had before the Tribunal. Oral motions were made to dismiss on the ground that the Tribunal as constituted violated the Fourteenth Amendment due process. The motions were denied. (Record thereof is not available.) Respondent submitted proposed Findings of Fact and Conclusions of Law to the Tribunal. (see Appendix No. 26.) They propose as follows in Paragraph 27, page 4 , of these proposed Findings:

"27. The law and procedure under which this Tribunal was appointed and acted was unconstitutional under the due process and equal protection clauses, the separation of powers doctrine and the appearance of fairness doctrine of

the Washington State and United States Constitutions because the Human Rights Commission appointed and paid the tribunal which heard the case, assessed the penalty, took the complaint, investigated the complaint, made the charge, tried the case and enforces the law. The qualifications for membership in the Tribunal and the oath are likewise unconstitutional for the same reasons." (Appendix No.26.)

Paragraph 2 of the proposed Conclusions of Law, page 5 , proposed as follows:

"2. This tribunal is unlawfully and unconstitutionally constituted." (Appendix No. 26.)

These were not adopted.

.(vii). Instead the Tribunal ruled the question of constitutionality was beyond the scope of its authority and it must be presented to the Superior Court if appealed. (See Tribunal Opinion, Appendix No. 1 , p.7-9 .) They stated:

"The Tribunal having disposed of Respondents' contentions as to the Commission's failure to have followed administratively required procedures, and having granted the Commission's Motion for Partial

> Summary Judgment, the only remaining preliminary and non-substantive issues raised by Respondents are whether or not 'the Tribunal is lawfully or constitutionally constituted' and whether or not 'the Commission is attempting to proceed under rules it has not been granted authority to adopt.' See affirmative defenses in Respondent's Answer, numbered X and XI.
>
> "Although Respondents presented no evidence at the hearing in support of either of these two affirmative defenses, the Tribunal rules that these issues are beyond the scope of its authority in this proceeding. See Yakima County Clean Air Authority v. Glascam Builders, Inc., 85 Wn.2d 255 at 257(1975); and Bare v. Gorton, 84 Wn.2d 380(1974). In the event that this decision of the Tribunal is appealed to Superior Court, such an argument could properly be raised at this time."

.(viii). On appeal to the Superior Court, the Franklin County Sheriff's Office submitted the same proposed findings as were submitted to the Tribunal and stated at page 2 in that presentation as follows:

"B. The Tribunal should have made the findings of fact in accordance with defendant's attached proposal consisting of thirty (30) findings. These are in accord with the evidence and the law. The proper findings are attached hereto. [Including Paragraph 27, supra., our page 18.] (see Appendix No. 27.)

Attorney for the Sheriff's Office urged the unconstitutionality. (Verbatim Report of Proceedings, p. 21-25.)

.(ix). The attorney for the Commission responded with argument and asserted

"The Hearing Tribunal was lawfully appointed." (Verbatim Report of Proceedings, page 53, et seq.)

.(x). A transcribed oral opinion of the Superior Court, at page 4, upheld the Constitutionality of the appointment of the Tribunal. (see Appendix 2.)

.(xi). Appeal was had to the Court of Appeals and federal due process unconstitutionality was assigned as Error #5. (Appendix No. 31.) and argued by counsel for the Sheriff's Office in brief at page 52-66 (not included in Appendix) and in oral argument, but ignored by the majority opinion of the Court. Otherwise the Court ruled in favor of the Franklin County Sheriff's Office.

.(xii). The Human Rights Commission appealed to the Washington State Supreme Court on the discrimination issue and

the Franklin County Sheriff's Office cross-appealed on the state and federal constitutional issues./ (Appendix No. 28.) Under Washington law, briefs in the Court of Appeals stand as submitted to the State Supreme Court on appeal. In a Court requested Brief (not included in Appendix) at p. 4-10,20-24, and in oral argument violation of federal due process was again urged. .(xiii). The Supreme Court of Washington in its Opinion 97 Wn.2d 317, 324-325, 329-334, 646 P.2d 113, at 116-117 and 119-121, held that the constitutional objections of the Franklin County Sheriff's Office were groundless and that the formation and actions of the Tribunal did not violate constitutional provisions of due process and separation of powers./ Mandate issued. (Appendix No.29.) Hence this application for certiorari. The federal question was timely and properly raised.

Rule 21.1.(i) Not applicable.

Rule 21.1.(j) Argument for Allowance of Writ Considering Rule 17.

The Washington State Supreme Court has decided important questions of federal constitutional law which has not been, but should be settled by the United States Supreme Court; and they decided it inconsistent with the trend of United States Supreme Court decisions. This fits Rule 17 requirements for acceptance.

The State Supreme Court below ruled that there was no federal constitutional objection under due process to: (1) agency appointed judges, (2) making Findings of Fact which are final and non-reviewable, (3) without allowing new evidence when appeal is taken to the Superior Court from these agency judges. Other objections were ignored

except the oath and the private litigation objection. See discussion in this case. Franklin County v. Sellers, 97 Wn.2d 317, at 324-325, 329-334; 646 P.2d 113 at pp. 116-117, 119-121.

The Washington State Supreme Court tried to soften their position by citing the New Washington statute appointing independent Judges in Washington. See Franklin County v. Sellers, 97 Wn.2d 317, footnote p. 331; 646 P.2d 113, footnote[3], p. 120.

In this case Franklin County was not protected by this new statute and neither are litigants before administrative agencies in forty-one (41) other

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[3]Brief of Professor Ivan C. Rutledge submitted Amicus Curiae to the Court of Appeals in this case sets forth the current status of the federal "due process" clause as it relates to administrative agency appointed Judges and this case.

states. Only Washington, California, Florida, Minnesota, New Jersey, Tennessee, Massachusetts, Colorado and Maine now (1981) have independently appointed Administrative Judges. See the entire volume of the Journal of the American Judicature Society, November 1981, Vol. 65, No. 5, discussing these matters, particularly Levinson, our footnote(2), supra, p. 14 .

Agency litigants in forty-one (41) states may need federal "due process of law" protection to obtain independent Judges which acceptance of this Petition may consider. The other nine (9) states might be provided with a federal "due process" underpinning for their statutes which presently are utterly repealable.

This is a federal "due process" idea of nationwide concern and application. Its time for consideration has come.

However this may be, we are not proposing this Court administer "general justice". It is the special facts of this case which are being constitutionally challenged and litigated here. If the United States Supreme Court proceeds on a case by case, fact by fact basis other states may gather some guidance as to the perview of the "due process" clause as it may relate to Administrative Judges. We urge acceptance of the Petition.

Submitted by mail this 15th day of October, 1982.

Respectfully submitted,

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